SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 695

THE UNITED STATES OF AMERICA, APPELLANT

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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1 *Criminal docket*

District Court of the United States for the District of Columbia

UNITED STATES

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

Case closed.
U. S. Attorney: Each: Charles J. Margiotti.
Criminal No. 167-48.
Charge: Vio. Sec. 313 of the Corrupt Practices Act, as amended by Sec. 304 of the Labor Management Relations Act, 1947.
Bond: $1,000.00 Natl. Surety Corp. Pitts. Pa. and $1,000.00 I. B. Jones.
G. J. No. Orig.

1948

Feb. 11—Presentment and Indictment filed.
Feb. 16—No. 2: Recognizance $1,000.00 taken with National Surety Corp., Pittsburgh, Pa., filed.
Feb. 20—Each: Arraigned, plea not guilty entered. (M 143) (Holtzoff, J.)
No. 2: Recognizance $1,000.00 taken with Isaac B. Jones, surety, filed.
Mar. 5—Each: Motion to dismiss indictment and Points and Authorities in support thereof, filed. Motion to dismiss argued and submitted. (M 127) (Moore, J.)
Mar. 15—Each: Defendant's motion to dismiss heretofore argued and submitted is granted. Memorandum opinion filed. (Moore, J.) (M 127)
Mar. 17—Each: Order granting motion to dismiss indictment, filed. (See Order) (Moore, J.) (M 127)
Each: Government's Notice of Appeal to the Supreme Court of the United States, filed. Statement as to jurisdiction, filed. Notice to Appellee of Rule 12 (3), of the Rules of the Supreme Court of the United States, filed. Designation of Record, filed.
Mar. 22—Each: Appellees' Designation of Record on Appeal, filed.

2 G. J. Original.
Criminal No. 167-48.
Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

In the District Court of the United States

For the District of Columbia

Holding a Criminal Term

January Term A. D. 1948

THE UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

Indictment

Filed in open court Feb. 11, 1948.

THE DISTRICT OF COLUMBIA, *ss:*

COUNT I

The Grand Jurors of the United States of America, duly impaneled and sworn to inquire within and for the District of Columbia and now attending the said Court upon their oaths present:

(1) That at all times mentioned herein the defendant Congress of Industrial Organizations, hereinafter referred to as CIO, was a labor organization as defined in Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

(2) That at all times mentioned herein Philip Murray was the duly elected and qualified President and an officer of said defendant CIO, and actively discharged the duties of his said office as President of said defendant CIO.

(3) That at all the times hereinafter mentioned, the said defendant CIO owned, composed, edited, and published a weekly periodical known as "The CIO News", and the said defendant CIO paid all of the costs and made all of the expenditures necessary and incidental to the publication and distribution of said periodical, "The CIO News", from the funds of the said defendant

3 CIO, including the salaries of the editors and contributors and other writers of texts set forth in said periodical including also the cost of the printing of the said periodical and the cost of the distribution of the said periodical, and all such payments and expenditures, including those representing the cost and distribution of the issue of said "The CIO News"

under date of July 14, 1947, and designated as Volume 10, No. 28, were made by said defendant CIO at Washington, in the District of Columbia, and within the jurisdiction of this Court.

(4) Heretofore, and on the fifteenth day of July 1947, a special election at which a Representative to Congress was voted for, was held in the Third Congressional District of the State of Maryland.

(5) That in anticipation of the holding of the said special election and with the intention thereby to violate the provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, the said defendant CIO caused the following text to be published on the front page of the issue of said periodical, "The CIO News", for and under the date of July 14, 1947, and designated as the issue known as Volume 10, No. 28:

"TEST OF POLITICAL FREEDOM

"By Philip Murray
"President, Congress of Industrial Organizations

"On Tuesday, July 15, a special Congressional election will be conducted in one of the Districts of the City of Baltimore.

"One of the candidates, Judge Ed Garmatz, has been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland. The candidate for the opposition party is notorious among the working men and women of Baltimore for his antiunion views and activities.

"The CIO has been requested by representatives of its members within the Congressional District involved in this election to give publicity to the action of the State PAC and to urge that members of CIO unions in the District cast their votes for Judge Garmatz.

"The Congress of the United States, however, has recently enacted a law, commonly known and referred to as the Taft-Hartley Act. This law purports to make it illegal for American working men and women organized into labor organizations and acting through their duly elected officers to expend their common funds to make their views heard and known in matters relating to elections for federal office.

4 "Senator Taft, the foremost sponsor of the new law, has publicly stated his view that it is the purpose, intent, and effect of the new law to stifle the voice of labor in political matters and particularly to prevent labor from supplying in its own publications, distributed among its own members, facts and information with respect to current election issues and candidates.

"I have been reared in a tradition of respect for the law of the land. In my public and private life I have adhered religiously to the principles of that training. Consistent with those principles I deem it the duty of citizenship to abide by and respect the highest law of the land—the Constitution of the United States.

"It has always been my understanding that that document guarantees the basic American rights of free speech, free press, free assemblage and forbids the denial of life, liberty, or property without due process of law. Those guarantees and those protections, I am advised and firmly believe, are and must be available to all without distinction, caste, or class.

"I am advised and firmly believe that they are rights and protections to which the working men and women of this country, the members of labor unions, the members of CIO unions, are fully entitled.

"If the Taft-Hartley Act means what is has been proclaimed to mean, it flagrantly flaunts fundamental principles which have been cornerstones of American tradition and American freedom ever since the founding of our great Nation.

"I believe that I would be remiss in the performance of my duties as an American citizen if I did not speak and act firmly in support of those great traditions and those vital freedoms which have made America what it is today.

"Under the procedures of our courts it is possible to strike down unconstitutional laws only by taking affirmative action in reliance on and in the exercise of the liberties guaranteed by the Constitution.

"This I have decided to do.

"I have made this decision not in a spirit of defiance or bravado or bitterness. Rather do I act in a spirit of regret that the Congress of the United States should have chosen to curb basic liberties, and in a spirit of hope and trust that the courts of the United States will vindicate those liberties.

"I therefore have directed and requested the editor of the CIO News to publish this statement, including the following paragraphs, and to give to this issue of the CIO News proper circulation among the members of CIO unions in the City of Baltimore and, particularly, within the Congressional District in which this election is scheduled to take place.

"The Taft-Hartley Act has imposed upon American workers and their unions untold ills and hardships which threaten their living and working standards and the very existence of their organizations. The evils of this law have become well known to members of our unions throughout the length and breadth of our land. It is vital for the preservation of the living standards of America that this law be repealed.

"It is apparently the judgment of CIO members and leaders in the City of Baltimore that Judge Garmatz is a candidate whose record, experience, and understanding are such that he may be expected to appreciate the evils of this law and to act in the public interest for its repeal. The CIO News belongs to the members of CIO and serves as the organ of expression for the principles and views democratically adopted by its members and affiliates.

"In performance of my duty as President of CIO, I therefor open the pages of this publication to an expression of views of the CIO members in Baltimore.

"In accordance with their decision and request I take opportunity to urge that all members of CIO residing and voting in the Congressional District in which this election is scheduled to take place cast their votes for Judge Garmatz, and make every effort to bring their neighbors and friends and to all persons eligible to vote in this election a full understanding of the issues involved and of the importance of voting for Judge Garmatz.

"I firmly believe that the action which I now take is fully legal under the law of our land. It is my understanding that the issue as to whether proper respect will be paid to the fundamental guarantees and principles of our Constitution must now rest in the hands of the law enforcement agencies of the federal government."

(6) That in the period beginning on or about the first day of July 1947 and continuing to and through the month of August 1947, at Washington, in the District of Columbia, and within the jurisdiction of this Court, the said CIO, defendant herein, unlawfully did make expenditures in connection with an election in which a Representative to Congress was to be voted for, to wit, a special election held in the Third Congressional District of the State of Maryland on the fifteenth day of July 1947, in the following manner and by the following means:

(a) That the defendant CIO expended a substantial sum of its money in the preparation, composition, printing, publication and distribution of the issue of the periodical, "The CIO News", dated July 14, 1947, and that the aggregate cost for the publication and distribution of that issue is to the Grand Jurors unknown, but includes the sum of approximately nine hundred dollars ($900.00) paid by the defendant CIO for the actual printing expenses of the said issue of the periodical, "The CIO News", and the sum of approximately one hundred dollars ($100.00) for postal charges in connection with the distribution of copies of the said issue of the periodical, "The CIO News", and a substantial part of the aggregate cost of the printing and distribution of said issue was expended by the said defendant CIO for the purpose of publishing the article entitled "Test of Political Free-

dom", hereinabove set forth, and causing said article to be distributed in the Third Congressional District of the State of
6 Maryland and elsewhere in connection with the special election held in that Congressional District on the fifteenth day of July 1947.

(b) That the defendant CIO also caused one thousand copies of the issue of the publication, "The CIO News", dated July 14, 1947, and designated as the issue known as Volume 10, No. 28, to be specially moved and transported from Washington, District of Columbia, into the Third Congressional District of the State of Maryland, by mailing the said one thousand extra copies to the Regional CIO Director at Baltimore, Maryland, and caused the funds of the said defendant CIO to be expended in printing, packaging and transportation of said extra copies of the periodical, "The CIO News", in connection with the aforesaid special election.

In violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

7 COUNT II

And the Grand Jurors aforesaid, upon their oaths aforesaid, do hereby reaffirm; reallege, and incorporate in the Count, as fully set forth herein, each and every allegation contained in paragraphs 1, to 5, inclusive, of Count I of this indictment, and do further present:

That in the period beginning on or about the first day of July 1947 and continuing to and through the month of August 1947, at Washington, in the District of Columbia, and within the jurisdiction of this Court, Philip Murray, the defendant herein, acting in his capacity as an officer of the defendant CIO, to wit, President, and well knowing all of the premises set forth in Count I of this indictment, unlawfully and knowingly did consent to the making of the expenditures by the defendant CIO as set forth in Count I of this indictment.

In violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

Tom C. Clark,
TOM C. CLARK,
Attorney General.

T. Vincent Quinn,
T. VINCENT QUINN,
Assistant Attorney General.

George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.

Turner L. Smith,
Thomas L. Smith,
Special Assistant to the Attorney General.
Jesse Climenko,
Jesse Climenko,
Special Assistant to the Attorney General.

A True Bill.

Theodore Long, *Foreman.*

In the District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Motion to dismiss indictment

Filed Feb. 20, 1948

The defendants move, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, that the indictment be dismissed upon the following grounds:

1. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press, as well as the right to peaceably assemble and to petition the government for a redress of grievances of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

2. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the members of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

3. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of defendant Philip Murray, in violation of the First and Fifth Amendments to the Constitution of the United States.

4. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press,

as well as the right to peaceably assemble and to petition the government for a redress of grievances of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

9 5. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the members of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

6. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the defendant Philip Murray, in violation of the First and Fifth Amendments to the Constitution of the United States.

7. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, are based upon an arbitrary classification and discriminate against labor organizations, their officers and their members, in violation of the Fifth Amendment to the Constitution of the United States.

8. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, fail to provide an ascertainable standard of guilt in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

9. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, invade the rights of defendants, protected by the Ninth and Tenth Amendments to the Constitution of the United States.

Respectfully submitted.

CHARLES J. MARGIOTTI,
LEE PRESSMAN,
Attorneys for Defendants.

10. In The District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Points and authorities in support of motion to dismiss indictment

Filed Feb. 20, 1948

I

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge defendants' freedom of speech and freedom of press, in violation of the First and Fifth Amendments to the Constitution.

Defendant Congress of Industrial Organizations has been indicted for the sole reason that it printed an article in support of a political candidate for election to a federal office in a weekly newspaper, the "CIO News", owned and published by said defendant, and that it caused the issue of said newspaper containing said article to be circulated.

Defendant Philip Murray has been indicted for the sole reason that he consented to the activities of defendant Congress of Industrial Organizations, set forth in the preceding paragraph.

A. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, would punish defendants for engaging in conduct protected by the First and Fifth Amendments.

Ex Parte Jackson, 96 U. S. 727.
Grosjean v. American Press Co., Inc., 297 U. S. 233.
Lovell v. Griffin, 303 U. S. 444.
Martin v. City of Struthers, 319 U. S. 141, 145, 146.
Hague v. CIO, 307 U. S. 496.

B. A prohibition upon the expenditure of funds requisite to the exercise of civil rights is in effect a prohibition upon the exercise of civil rights.

Bowe v. Massachusetts, 230, Mass. 320, 69 N. E. (2d) 115.
State v. Pierce, 163 Wis. 615, 158 N. W. 696.

11 C. A statute prohibiting the exercise of civil rights is not presumed to be valid.

Near v. Minnesota, 283 U. S. 697.
Thornhill v. Alabama, 310 U. S. 88.
Bridges v. California, 314 U. S. 252.
Murdock v. Pennsylvania, 319 U. S. 105.

Where as here the prohibition upon the exercise of civil rights involves a ban upon the participation in political processes, such prohibition is subject to a particularly searching judicial scrutiny.

U. S. v. Carolene Products Co., 304 U. S. 144, 152, 153.

D. In order to warrant the curtailment of freedom of speech and freedom of the press there must be a clear and present danger that a substantive evil which the government has a right to curb will result if the speech or publication is permitted. The evil involved must be substantial and it must be serious.

Schenck v. U. S., 249 U. S. 47, 52.
Herndon v. Lowry, 301 U. S. 242, 256.
West Virginia v. Barnette, 319 U. S. 624.
Bridges v. California, 314 U. S. 252.

E. Congress could not find that an evil would result from the publication of the article in the "CIO NEWS" described above.

1. The participation by labor organizations in political life is an important and legitimate means for the effective exercise of political rights by working men and women.

DeMille v. American Federation of Radio Artists (Cal. Sup. Ct.), 13 Labor Cases 72,361 (Dec. 16, 1947).
Thomas v. Collins, 323 U. S. 516, 547.
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1.
Gaer, The First Round (1944).
Barbash, "Unions, Government and Politics", 1 Industrial and Labor Relations Review, 66 (1947).

12 2. The publication may not be banned as a corrupt practice which menaces the purity of federal elections.

Ex Parte Yarborough, 110 U. S. 651.
U. S. v. Mosley, 238 U. S. 383.
Burroughs and Cannon v. U. S., 290 U. S. 534.
Smith v. Higinbotham, — Md. —, 48 A. (2d) 754.

3. The use of union dues by defendants to finance the publication could not create substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
DeMille v. American Federation of Radio Artists (Cal. Sup. Ct.), 13 Labor Cases 72,361 (Dec. 16, 1947).
Overacker, "Labor's Political Contributions", 54 Pol. Science Quart. 56, 68 (1939).

F. Even if an evil could result from the publication, Congress is required to curb the evil without suppressing civil rights.

Schneider v. State, 308 U. S. 147, 161.
Hague v. CIO, 307 U. S. 496.
Thomas v. Collins, 323 U. S. 516.

II

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, are on their face in violation of the First and Fifth Amendments to the Constitution.

A prohibition upon expenditures in connection with elections constitutes a complete ban upon the exercise of a civil right since any activity undertaken by defendants requires an expenditure. Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, is therefore invalid on its face.

Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
State v. Pierce, 163 Wis. 615, 158 N. W. 646.

13 III

The publication by an unincorporated association of a newspaper for the purpose of informing its membership of matters of common interest is a vital aspect of the right of free assembly. That right is abridged by Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

DeJonge v. Oregon, 299 U. S. 353, 364.
Thomas v. Collins, 323 U. S. 516.
Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
Linaker v. Pilcher, 70 L. J. K. B. 396, 87 L. T. 421.

IV

The publication by an unincorporated association of an article in its newspaper in support of a candidate for federal office because he is expected to vote for the repeal of a law is a vital aspect of the right to petition for redress of grievances. That right is abridged by Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

Cf. Thomas v. Collins, 323 U. S. 516.

V

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations

Act, 1947, are based upon an arbitrary classification and discriminate against labor organizations, their officers and their members, in violation of the Fifth Amendment to the Constitution.

The federal government may not in the guise of law impose criminal sanctions upon one type of unincorporated association for engaging in conduct which another type of unin-
14 corporated association may engage in with impunity where no basis for differentiation exists.

Hirabayashi v. U. S., 320 U. S. 81, 100.
Connolly v. Union Sewer Pipe Co., 189 U. S. 450.
Hurtado v. California, 110 U. S. 516, 535.
Nichols v. Coolidge, 274 U. S. 531.
Wallace v. Currin, 95 F. (2d) 856 (C. C. A. 4).
Minski v. United States, 131 F. (2d) 614 (C. C. A. 6).
United States v. Ballard, 12 F. Supp. 321 (W. D. Ky.).

Certainly Congress may not deny civil rights to one group which it grants to others or suppress publication of the views of labor organizations which are unincorporated but not those of anti-labor organizations which are unincorporated.

Cantwell v. Connecticut, 310 U. S. 296, 305.
Jones v. City of Opelika, 319 U. S. 103.
Prince v. Massachusetts, 321 U. S. 158.

VI

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, fail to provide an ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments to the Constitution.

Small v. American Sugar Refining Co., 267 U. S. 233.
Connally v. General Construction Co., 269 U. S. 385.
Lanzetta v. New Jersey, 306 U. S. 451, 453.
M. Kraus & Bros. v. U. S., 327 U. S. 614, 621.
Stromb[illegible] v. California, 283 U. S. 359.
New York Times, June 21, 1947, p. 2, col. 7.
New York Herald Tribune, July 11, 1947, p. 1, col. 3.
New York Herald Tribune, July 12, 1947, p. 1, col. 4.
New York Herald Tribune, July 16, 1947, p. 3, col. 2.
93 Cong. Rec., pp. 6593, 6594, 6595, 6596, 6597, and 6598 (June 5, 1947).

VII

An unincorporated association and its officers enjoy the rights protected by the First and Fifth Amendments to the Constitution.

15 Grosjean v. American Press Co., Inc., 297 U. S. 233
Bridges v. California, 314 U. S. 252.
Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
Pennekamp v. Florida, 328 U. S. 331.
Virginia Electric & Power Co. v. National Labor Relations Board, 319 U. S. 533.
National Labor Relations Board v. American Tube Bending Co., 134 F. (2d) 993 (C. C. A. 2), cert. denied 320 U. S. 768.
U. S. v. Associated Press, 326 U. S. 1.
Associated Press v. National Labor Relations Board, 301 U. S. 103.
National Labor Relations Board v. American Pearl Button Co., 149 F. (2d) 311 (C. C. A. 8).

VII

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, invade the rights of defendants, protected by the Ninth and Tenth Amendments to the Constitution.

Article I, Section 4 of the Constitution of the United States.
Newberry v. United States, 256 U. S. 232.

Charles J. Margiotti,
Charles J. Margiotti,
Lee Pressman,
Lee Pressman,
Attorneys for Defendants.

16 In the District Court of The United States
For the District of Columbia

Criminal No. 167-48—On Defendants' Motion to Dismiss Indictment.

United States of America, plaintiff

v.

Congress of Industrial Organizations, Philip Murray, Officer Thereof, defendants

Turner Smith, Esq., Special Assistant to the Attorney General, Washington, D. C.
Jesse Climenko, Esq., Special Assistant to the Attorney General, Washington, D. C., for Plaintiff.
Charles J. Margiotti, Esq., 720 Grant Building, Pittsburgh, Pennsylvania.

Lee Pressman, Esq., 9 E. 40th Street, New York, New York.
Frank Donner, Esq., 718 Jackson Place NW., Washington, D. C., for Defendants.

BEN MOORE, District Judge:

Opinion

Filed March 15, 1948.

The Labor Management Relations Act recently passed by Congress imposes many conditions, restrictions, limitations and prohibitions upon labor organizations in the economic arena wherein the battles between labor and management are fought. With these economic features of the Act we are not concerned in this case. However, by one section of the Act
17 Congress broadened its scope to include activities of labor organizations in the political field.

Section 304 (2 U. S. C. A. Sec. 251) makes it unlawful for any labor organization to make an expenditure in connection with any election at which candidates for a federal office are to be selected or voted for. The penal sanctions of this section extend also to an officer of a labor organization who consents to such an expenditure by the organization of which he is an officer:

This case arises under Section 304 of the Act.

The Congress of Industrial Organizations, conveniently referred to as CIO, publishes and circulates a newspaper called the CIO News. Philip Murray is president of CIO.

On July 15, 1947, a special election was held to elect a representative in Congress in the Third Congressional District of the State of Maryland. Immediately prior to this election, in express disobedience of the provisions of Section 304 of the Labor Management Relations Act relative to expenditures by labor organizations in connection with federal elections, and for the purpose of testing their constitutionality, Murray wrote an editorial favoring one of the cadidates and opposing the other, and caused it to be published in the CIO News, and circulated in the Third Congressional District of Maryland. Apparently to remove all doubt that CIO was by this act making expenditures in connection with an election, one thousand extra copies of the newspaper containing Murray's editorial were printed and circulated by CIO. The
18 expenditures for publishing and circulating the newspaper were made in the District of Columbia, and the one thousand extra copies were mailed from there to be circulated in Maryland.

This indictment followed. It charges CIO with making expenditures in connection with a federal election by publishing and

circulating the Murray editorial, and Murray as president of CIO with consenting to such expenditures.

Defendants have moved to dismiss the indictment on the broad ground that the applicable part of Section 304 of the Act is unconstitutional because it violates the guaranties of the Bill of Rights, particularly those of the First Amendment.

The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections.

Thus the Court is confronted with the necessity of passing on the validity of Section 304 of the Act, insofar as it relates to expenditures by labor organizations in connection with federal elections.

I am sensible of the deference which courts must accord to the considered will of the legislative branch of the government as expressed in a statute. If a reasonable construction of the statute can logically be made under which it is free from imputa-
19 tion of unconstitutionality, the statute must be so interpreted. If, however, the words of the statute are plain and can have only one meaning, a court cannot escape the obligation of deciding whether or not it falls within the limits of constitutional legislative power. Gemsco, Inc. et al. v. Walling, 324 U. S. 244; 260; United States v. Rice, District Judge, 327 U. S. 742, 753. By the words of this statute expenditures of a labor organization in connection with any federal election are made unlawful.[1] Regardless of whether this provision does or does not fix an ascertainable standard of guilt it is clear that the acts of CIO in publishing and circulating the editorial, and of Murray in consenting thereto, come within its scope. The editorial was written with specific reference to a particular federal election and the expenditure made for publishing and circulating it was therefore necessarily made in connection with that election. The statute contains no exemption or exclusion eliminating from its prohibitions those activities which the Bill of Rights protects. Indeed, few acts in connection with an election, other than those which have

---

[1] It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in * * * Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices * * * Every * * * labor organization which makes any contribution or expenditure in violation of this section shall be fined * * *; and every officer * * * of any labor organization who consents to any contribution or expenditure by the * * * labor organization * * * shall be fined * * *." The section further provides penalties for its violation. 2 U. S. C. A., Sec. 251.

for their purpose some sort of coercion, intimidation or corruption of the electorate could be said to be without the boundaries of such protection. It is plain that Congress by this statutory provision denounced as unlawful acts which would otherwise be entirely innocent in nature, and in the exercise of which a labor organization is concededly protected under the Bill of Rights. cf. Grosjean v. American Press Co., Inc., et al., 297 U. S. 233; Bridges v. California, 314 U. S. 252. I conclude, therefore, that the indictment charges an offense under Section 304 of the Labor Management Relations Act, and it follows that if the provisions of that section, pursuant to which the indictment was returned; were constitutionally valid, the indictment would necessarily be sustained.

Judged by its plain terms, the statute on its face fails to survive the constitutional test.

I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgement of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life. cf. Bridges v. California, supra, 269.

The legislative history of the statutory provision under consideration, copiously related in briefs of counsel for the government, clearly shows that the legislation was aimed at the very type of political activity which is charged as an offense in this indictment, namely, the publication and distribution of newspapers containing editorials favoring or opposing candidates for federal office. It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment (which the government concedes was done here) because of its constitutional control over the manner of holding elections, and its consequent power to prevent corruption therein, and to secure clean elections. This argument would be persuasive if the statute prohibited specific acts of a kind which might conceivably be expected to produce corruption in any of its forms, or to prevent in any way the holding of free elections; but the untrammeled right of free expression of views as to candidates for office, through newspapers or other means of conveying the written or spoken word, and of the public in general to have free access thereto, far from being a conceivable means of corrupting or interfering with free elections, is in fact one of the

most valuable means of promoting purity and freedom in the electoral process. See De Jonge v. Oregon, 299 U. S. 353, 365.

It must be remembered that it is not only the right of the publisher of a newspaper or editorial sheet which is protected by the First Amendment; but also, and perhaps over and above that right, there is the right of the people to be informed of the views represented by conflicting interests and opinions. How are they to get such information concerning the views of laboring men and women if the organization in and through which such persons are united in a common purpose is forbidden to publish any
22 views whatsoever?

It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government, is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor Management Relations Act containing this Section 304 is an amendment. Labor Management Relations Act, 1947, 29 U. S. C. A. Secs. 151, 159. However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of
23 voters of differing political party affiliation is not to say that all these may not be unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest.

From what has been said it is plain that no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation. The Supreme Court has said, and reiterated in many cases, that such a situation must exist if any abridgment of the freedoms of the First

Amendment is to be justified. Thornhill v. Alabama, 310 U. S. 88; West Virginia State Board of Education et al. v. Barnette et al., 319 U. S. 624; Thomas v. Collins, 323 U. S. 516. Nowhere is the idea better expressed than in the Thomas case, wherein Mr. Justice Rutledge, speaking for the majority of the Court, says:

"The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

24 Further on in the same opinion Mr. Justice Rutledge continues:

"Where the line shall be placed in a particular application rests * * * on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the special restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. And the answer, under that tradition can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this."

In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of United Public Workers v. Mitchell, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning

the conduct of its own employees. cf. United States v. Wurzbach, 280 U. S. 398. The activities in which Mitchell had engaged and which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the Mitchell case. Moreover, the Mitchell case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composit entities and not individuals, and by their very nature can make no move which does not involve some expenditure.

Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment.

For the reasons given, the motion of defendants to dismiss the indictment will be sustained. An appropriate order may be presented for entry.

Ben Moore,
BEN MOORE,
United States District Judge.

WASHINGTON, D. C., *March 13, 1948.*

26 In the District Court of the United States for the District of Columbia

No. 167-48

UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

[File endorsement omitted.]

Order granting motion to dismiss indictment

Filed March 17, 1948

The defendants, Congress of Industrial Organizations and Philip Murray, officer thereof, having moved the Court for an order dismissing the indictment upon the ground that the applicable provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, are unconstitutional on their face and as construed and applied, and

Said motion having come on to be heard and having heard the arguments of counsel in open court and upon consideration of the applicable provisions of the statute, the indictment and said motion and the points and authorities of defendants in support thereof and the points and authorities of the Government in opposition thereto, and

The Court having determined that that portion of the statute prohibiting expenditures by labor organizations in connection with any election in which candidates for a Federal office are to be selected or voted for is unconstitutional, in accordance with the opinion of the Court rendered herein, dated March 15, 1948, it is

Ordered, adjudged, and decreed, that defendants' motion to dismiss the indictment be, and the same hereby is, granted, and the indictment is dismissed on the ground that that portion of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which

27 prohibits expenditures by any labor organization in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention

or caucus held to select candidates for any of the foregoing offices, is unconstitutional.

BEN MOORE,
United States Judge.

Approved as to form:

GEORGE MORRIS FAY,
United States Attorney.
FRANK J. DONNER,
Counsel for Defendants.

28 In the District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed March 17, 1948

The United States of America hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court for the District of Columbia entered March 17, 1948, dismissing the indictment against the defendants, Congress of Industrial Organizations and Philip Murray, officer thereof, which charged them with violating Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act of 1947, in that the Congress of Industrial Organizations expended funds of the organization in connection with an election at which a Representative in Congress was to be elected and that the defendant Philip Murray consented to the expenditure of said funds, on the ground that the statute on which the indictment was based is unconstitutional.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Department of Justice, Washington, D. C.

Dated March 17, 1948.

29 In the District Court of the United States

For the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Designation of record on appeal

Filed March 17, 1948

The clerk will please prepare and certify to the Clerk of the Supreme Court of the United States a transcript of record on appeal in this case and include therein the following:

1. Transcript of docket entries.
2. The criminal indictment.
3. Motion of defendants to dismiss the indictment.
4. The opinion of the district court, dated March 13, 1948.
5. The order of the district court, entered March 17, 1948, dismissing the indictment.
6. Notice of appeal.
7. Statement as to jurisdiction.
8. Statement to appellees, pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States.
9. This designation.

JESSE CLIMENKO,
Jesse Climenko,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

30 In the District Court of the United States

For the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Appellees' designation of record on appeal

Filed March 22, 1948

The Clerk will please prepare and certify to the Clerk of the Supreme Court of the United States a transcript of record on appeal in this case and include therein the following:

1. Transcript of docket entries.
2. The criminal indictment.
3. Motion of defendants to dismiss the indictment.

4. Statement of points and authorities in support of motion of defendants to dismiss the indictment.
5. The opinion of the district court, dated March 13, 1948.
6. The order of the district court, entered March 17, 1948, dismissing the indictment.
7. Notice of appeal.
8. Statement as to jurisdiction.
9. Statement to appelles, pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States.
10. This designation.

Frank Donner,
FRANK DONNER,

Attorney for Defendants Congress of Industrial Organizations and Philip Murray, Officer Thereof, 718 Jackson Place NW., Washington 6, D. C.

31 [Clerk's certificate to foregoing transcript omitted in printing.]

32 Supreme Court of the United States

No. 695, October Term, 1947

Order noting probable jurisdiction

March 29, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument on Monday, April 26, 1948.

33 In the Supreme Court of the United States

October Term, 1947

No. 695

Statement of points to be relied upon and designation of record

Filed March 31, 1948

Pursuant to Rule 13, paragraph 9, of the Rules of this Court, the appellant states that it intends to rely on the following points:
The district erred—
(1) In granting the motion to dismiss the indictment;
(2) In holding unconstitutional Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Manage-

ment Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120);

(3) In holding that said Section 304 of the Labor Management Relations Act, insofar as it prohibits the expenditure of funds of a labor organization in connection with a federal election, is on its face an unconstitutional abridgement of freedom of speech, freedom of the press, and freedom of assembly.

34 Appellant deems the entire record as filed in the above-entitled case necessary for the consideration of the points relied upon.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

MARCH 31, 1948.

[File endorsement omitted.]

(Endorsement on cover:) File No. 52925. District of Columbia, D. C. U. S. Term No. 695. The United States of America, Appellant vs. Congress of Industrial Organizations, Philip Murray, Officer Thereof. Filed March 25, 1948. Term No. 695 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948